IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

MONDAY, THE 17TH SEPTEMBER 2007 / 26TH BHADRA 1929

RSA.No. 631 of 2007()

AS.26/2006 of ADDL.DISTRICT COURT, THRISSUR
OS.219/2000 of PRL.SUB COURT,IRINJALAKUDA

.....

APPELLANT/APPELLANT/PLAINTIFF

PRAKASHAN, S/O.THALIYAPARAMBIL APPU,
KAIPAMANGALAM VILLAGE, KODUNGALLUR TALUK.

BY ADV. SRI.P.V.CHANDRA MOHAN

RESPONDENT: RESPONDENT/DEFENDANT

MOHANLAL, S/O.BALAPARAMBIL GANGADHARAN,
CHALINGAD DESOM, KAIPAMANGALAM VILLAGE,
KODUNGALLUR TALUK.

THIS REGULAR SECOND APPEAL HAVING COME UP FOR ADMISSION ON 17/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

M.SASIDHARAN NAMBIAR, J.

R.S.A. NO. 631 OF 2007

Dated this the 17th day of September, 2007

J U D G M E N T

Plaintiff in O.S. 219/2000 on the file of the Sub Court, Irinjalakkuda is the appellant. Defendant is the respondent. Appellant instituted the suit seeking a decree for realisation of Rs.1 lakh with interest and cost contending that respondent borrowed the amount in 1998 and when appellant demanded repayment of the amount, respondent issued Ext.A1 cheque dated 1.6.2000 drawn in his account in Chenthrappinni Branch, Canara Bank and the cheque when presented for encashment was dishonoured for want of sufficient funds and in spite of Ext.A3 notice demanding payment of the amount, respondent did not pay the same and appellant is entitiled to realise the amount with cost. Respondent resisted the suit contending that in 1998 he did not borrow any amount from the appellant and did not issue Ext.A1 cheque for repayment of the loan. It was contended that appellant is a money lender and in 1995 he borrowed Rs. 1 lakh from the appellant and towards its security he issued two cheques for Rs.50,000/- and he agreed to repay the amount in 36 monthly instalments of Rs.4,000/- each. As security Ext.A1 cheque was given by the respondent to the appellant on 11.11.85 without putting the date. Apart from the agreement for sale with respect to the property, respondent has

not executed any security and he had paid the entire amount by November 1998 and appellant is not entitled to the decree sought for.

2. Learned Sub Judge on the evidence of DW1 and Exts. A1 to A5 and Exts. B1 to B7 found that case of the appellant that respondent borrowed Rs. 1 lakh in 1998 and Ext.A1 cheque was issued cannot be behind and Ext.A1 cheque was issued as security when respondent borrowed Rs. 1 lakh from the appellant in 1995 and dismissed the suit. Appellant challenged the decree and judgment before the District court, Thrissur, in A.S. 26/2006. Learned Additional District Judge on reappreciation of evidence confirmed the findings of the learned Sub Judge and dismissed the appeal. It is challenged in the second appeal.

3. Learned counsel appearing for appellant was heard.

4. The argument of the learned counsel is that courts below did not properly appreciate the evidence and should not have drawn the necessary inference provided under Section 118 and Section 139 of the Negotiable Instruments Act. The argument is that having admitted the signature in Ext.A1 cheque, courts below should have drawn the presumptions provided under the Negotiable Instruments Act and in any event should not have believed the case of discharge pleaded by the respondent, in the absence of documentary evidence. Learned counsel therefore argued that decree and findings of the courts below are not sustainable and are to be set aside.

5. After hearing the learned counsel, I do not find any substantial question of law involved in the appeal. The question whether respondent borrowed Rs.1 lakh from the appellant in 1998 and towards its repayment Ext.A1 cheque was issued or the respondent borrowed Rs. 1 lakh in 1995 pursuant to Ext.B1 agreement for sale and Ext.A1 cheque was issued as security are questions of fact which could be decided only on the basis of evidence on record. The trial court had the opportunity to note the demeanour of appellant as PW1 and respondent as DW1. The learned Sub Judge on appreciation of the evidence found that the case of respondent that he received Rs.1 lakh under Ext.B1 agreement from the appellant is proved and that fact was admitted by the appellant in the proof affidavit also. That was also taken note of by the learned Sub Judge. The suggestion put to DW1 was that the amount was repaid in 1998 and thereafter Rs. 1 lakh was again borrowed for which Ext.A1 cheque was issued. Learned Sub Judge held that case is improbable in the facts and circumstances of the case. It is on the basis of appreciation of evidence, trial court found that respondent did not borrow Rs.1 lakh in 1998 as claimed and instead Rs. 1 lakh was received under Ext.B1 in 1995 and Ext.A1 cheque was issued only as a security for that transaction. The first appellate court reappreciated that evidence and also confirmed the factual finding that there was not borrowal in 1998 and confirmed the findings of the learned Sub Judge. The argument of the learned counsel appearing

for the appellant is that evidence is to be reappreciated and a different finding has to be entered into.

6. On going through the judgments of the court below and hearing the learned counsel, it cannot be said that the appreciation of the evidence was perverse warranting reappreciation of evidence and substitute the finding of this Court to that of the courts below. In such circumstances, there is no substantial question of law involved in the appeal.

Appeal fails and it is accordingly dismissed in limine.

M.SASIDHARAN NAMBIAR, JUDGE

vps

K.R. UDAYABHANU, JUDGE

CRL.A. NOS.721/99 & 213/02

JUDGMENT

13TH SEPTEMBER, 2007

CRL.R.P.769/00

ORDER IN CRL.M.P. NO.4143/00 IN CRL.R.P.769/00

DISMISSED

13.9.07 SD/- **K.R. UDAYABHANU, JUDGE**

/TRUE COPY/

PA TO JUDGE.